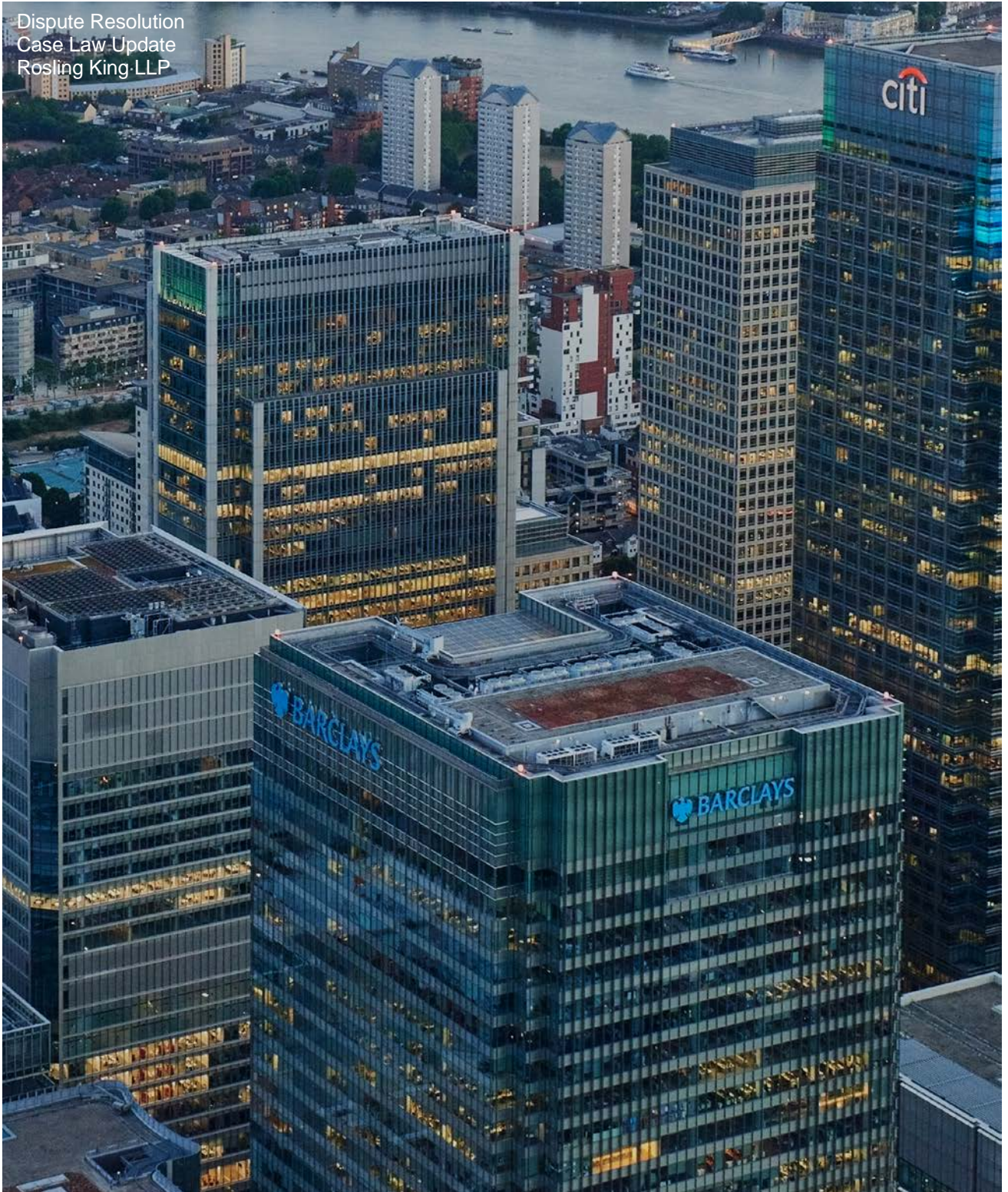


Dispute Resolution  
Case Law Update  
Rosling King LLP



The Chancery Division of the High Court recently held that a commercial tenant was entitled to damages after deciding that the Tenant's right to peaceable enjoyment of their Property had been breached by the Landlord, who had acted unreasonably in exercising their right to carry out redevelopment works.

**Background**

The Claimant/Tenant (Timothy Taylor Ltd) occupied two floors of a building owned by the Defendant/Landlord (Mayfair House Corporation). The Property was for use as a high-end art gallery under a 20-year Lease which commenced in 2007. Since August 2013, the Defendant had been carrying out substantial redevelopment works. Whilst the Claimant accepted the Defendant's right under the terms of the Lease to carry out these works, they claimed the noise and scaffolding erected on the outside of the building had unreasonably interfered with their use and enjoyment of the Property.

**Case Summary**

The Judge decided on three issues in making his decision, the first of which was most significant as it focused on whether the Defendant had acted reasonably when carrying out their right to redevelop:-

1. The Judge looked at the covenants contained in the Lease. Firstly, had the Defendant's works breached the express covenant in the Lease for the Claimant's quiet enjoyment of the Property? Secondly, had the Defendant breached the implied covenant not to derogate from the grant of the Lease? (This looks at whether the Defendant's works had been undertaken in such a way as to undermine the reason why the Lease to the Claimant was granted)

The Judge commented that this was a high-end art gallery and the Claimant was paying significant rent for the Property. As a result, the Defendant should have been extra vigilant in ensuring any works were carried out in a manner which reduced disruption. The Judge, whilst recognising that the Defendant had no obligation to offer reduced rent, said the failure to do so raised the bar when it came to considering the reasonableness of the works. The Judge decided that the Defendant had not reached this standard of reasonableness and that both the level of noise and the manner in which the scaffolding had been constructed breached the express and implied covenants stipulated above. The Judge further explained that the Defendant's failure to give the Claimant warning of the extent of the works, as well as the level of noise, had deprived them of the opportunity to find an alternative location for their business. Additionally, the scaffolding had impeded access to the Property and the Defendant could have constructed it differently so as to reduce its impact on the Claimant. As such, the Defendant's actions in exercising its right to redevelop were deemed unreasonable.

The two other elements of the claim were:-

2. Whether the Defendant was permitted to enter the Property to remove a screed (wooden board used in construction) from the floor of the Property?

The Judge commented that this issue should have been ‘academic’ as the Defendant did not actually enter the Property, however they insisted that they were entitled to do so if they wished. The Judge looked closely at the wording of the Lease and decided that the Defendant’s right extended only as far as a right for entry to inspect and assess the state of the Property. The Lease did not allow the Defendant to occupy the Property for a significant period of time, which removal of the screed would have required, and as such ruled in favour of the Claimant.

3. Whether the Defendant was entitled, as part of its works, to fill in a lightwell which adjoined the Property?

The Judge looked at whether the lightwell fell under the definition of ‘Common parts’ in the Lease and decided it did not, ruling in favour of the Claimant.

The Judge awarded the Claimant damages for the disruption it had experienced up to the date of the Judgement, together with damages on the basis of 20% of the rent until the works were completed.

### Commentary

This case is a reminder for landlords on the importance of maintaining good relationships with their tenants and anticipating the impact of any redevelopment works. The Defendant in this case could have arguably avoided the claim by offering reduced rent to the Claimant, thereby lowering the bar of reasonableness which the works had to reach. Furthermore, when planning any works, landlords should open a dialogue with tenants at an early stage and incorporate the need to mitigate disruption to tenants in their initial plans. Landlords should also be realistic when discussing the length of the works to ensure that tenants can adjust accordingly. Issues two and three of the Case Summary also demonstrate the importance of clear and unambiguous drafting in commercial leases.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.